

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	)	<b>Criminal No. 1:CR-01-195</b>
	)	<b>(Judge Caldwell)</b>
<b>v.</b>	)	
	)	
<b>ANTHONY BRAXTON</b>	)	

**SUPPLEMENTAL RESPONSE OF THE UNITED STATES TO  
MOTION FOR RELIEF PURSUANT TO 28 U.S.C. § 2255**

**AND NOW** this 18th day of December 2006, comes Thomas A. Marino, United States Attorney for the Middle District of Pennsylvania, by William A. Behe, Assistant United States Attorney, who files this Supplemental Response of the United States to Motion for Relief Pursuant to 28 U.S.C. § 2255 and, in support thereof, alleges as follows:

1. On August 16, 2006, the Petitioner, Anthony Braxton, filed a Motion for Relief Pursuant to 28 U.S.C. § 2255.
2. On October 19, 2006, the United States filed its response indicating therein that an evidentiary hearing may be necessary to address the Petitioner's claims of ineffective assistance of counsel.
3. A hearing on said motion is currently scheduled for December 20, 2006.
4. The petitioner was sentenced on June 26, 2002. He did not appeal.

Therefore, under the provisions of the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), any motion for relief pursuant to 28 U.S.C. § 2255 had to have been filed within 1 year of sentencing. Therefore, said motion would have to have been filed before June 26, 2003. As stated, the § 2255 motion was not filed until August 16,

2006.

5. The United States maintains that the Petitioner's motion is untimely and should be dismissed for this reason.

6. This affirmative defense is being raised in advance of the aforementioned evidentiary hearing. In order to avoid any prejudice to the Petitioner, it is respectfully requested that the evidentiary hearing be cancelled and that the Petitioner be given an opportunity to respond to the United States' position that his motion is time-barred. Depending upon the petitioner's response, and the court's ruling thereon, an evidentiary hearing may not be needed. See United States v. Bendolph, 409 F.3d 155 (3d cir. 2005).

WHEREFORE, it is respectfully requested that the evidentiary hearing be cancelled and that the Petitioner be given an opportunity to respond to this Supplemental Response of the United States.

Respectfully submitted,

THOMAS A. MARINO  
UNITED STATES ATTORNEY

/s/ WILLIAM A. BEHE

---

WILLIAM A. BEHE  
Assistant U.S. Attorney  
228 Walnut Street  
P.O. Box 11754  
Harrisburg, PA 17108  
717/221-4482 (Office)  
717/221-2246 (Fax)  
[WILLIAM.BEHE@USDOJ.GOV](mailto:WILLIAM.BEHE@USDOJ.GOV)  
Bar No. PA-32284

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	)	<b>Criminal No. 1:CR-01-195</b>
	)	<b>(Judge Caldwell)</b>
<b>v.</b>	)	
	)	
<b>ANTHONY BRAXTON</b>	)	

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 18th day of December 2006, she served a copy of the attached

**SUPPLEMENTAL RESPONSE OF THE UNITED STATES TO  
MOTION FOR RELIEF PURSUANT TO 28 U.S.C. § 2255**

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Harrisburg, Pennsylvania and/or by electronic means by sending a copy to the e-mail addresses stated below:

**ADDRESSEE(S):**

Anthony Braxton  
#10848-067  
P.O. Box 7000/5852 West  
Fort Dix, NJ 08640

James J. West, Esquire  
West Long LLC  
105 North Front St  
Suite 205  
Harrisburg, PA 17101  
E-mail: [ecffilings@west-long.com](mailto:ecffilings@west-long.com)

/s/ CYNTHIA A. ZIMMERMAN

\_\_\_\_\_  
CYNTHIA A. ZIMMERMAN  
Legal Assistant